

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,) RM-
FM Broadcast Stations)
(Ty Ty, Georgia))

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NOV 12 2004

Federal Communications Commission
Office of Secretary

Filed With: Office of the Secretary

To: **Assistant Division Chief, Audio Division**
Media Bureau

PETITION FOR RULEMAKING

Sutton Communications Company ("Sutton"), by its attorney, hereby requests that the Commission amend the FM Table of Allotments as follows:

<u>Community</u>	<u>Current</u>	<u>Proposed</u>
Ty Ty, Georgia	—	249A

In support thereof, the following is stated:

Sutton wishes to allot Channel 249A to Ty Ty, Georgia. Ty Ty is listed as a community by the United States Census Bureau with a population of 745 persons, and currently has no local aural service assigned to the community. Ty Ty is an incorporated community with its own Mayor and City Council. It also has its own Volunteer Fire Department, City Clerk, and water and sewer services. Therefore, Ty Ty easily qualifies as a *bona fide* community.

The reference point for the allotment is 31° 34' 01"N, 83° 40' 07"W. This proposal is in full accord with all existing allotments and stations except for the licensed facility of Station WDMG-FM, Ocilla, Georgia. In the *Report and Order* in MB Docket No. 03-

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246, 19 FCC Rcd 6940 (MB 2004), WDMG-FM (formerly WKAA(FM)) was ordered to change its community of license and channel of operation from Channel 249A at Ocilla, Georgia to Channel 250A at Ambrose, Georgia. Subsequently, WDMG-FM filed an application for issuance of a construction permit (File No. BPH-20040521AGT), which is at a site that is fully spaced with the proposed Ty Ty allotment. That construction permit was granted on August 13, 2004. Moreover, the licensee of WDMG-FM has already constructed the facilities specified in the permit, and is already operating WDMG-FM at its new site under automatic Program Test Authority. The license application for the new WDMG-FM facilities was filed on November 4, 2004. File No. BLH-20041104AUI.

Therefore, *Cut and Shoot*, 11 FCC Rcd 16383 (1996), is not applicable. Unlike *Cut and Shoot*, where the concern was that “the facilities set forth in some outstanding construction permits are never built and licensed” (*id.* at ¶ 4), here, the prior site *already* is abandoned, and the new modified facilities *already* have been built and are operating prior to the filing of this Petition. The Commission has recognized that granting a license to a facility built in full accordance with the terms of a construction permit not only is statutorily mandated (47 U.S.C. §319(c)), it is considered merely a ministerial act. *Effingham Broadcasting Co.*, 4 R.R. 2d 494 ¶ 6 (1975).¹ Therefore, the concerns and reasoning of *Cut and Shoot* are inapposite. *Accord, Pauls Valley and*

¹ This is because during the 319(c)) stage of the licensing process, a holder of a construction permit has a protected interest in grant of its license application, and an earlier public interest finding could be overturned only based upon “extraordinary circumstances.” *Radio Ingstad Minnesota, Inc.*, 12 FCC Rcd 2502 ¶ 6 (1997), *citing*, *Whidbey Broadcasting Service, Inc.*, 4 FCC Rcd 8726, 8727 (1989).

Healdton, OK, 13 FCC Rcd 11896, n.1 (Chief, Allocations Branch 1989) (where licensee has ceased operation at its licensed site and evidence is presented that licensee has no intention of returning to the licensed site, waiver of *Cut and Shoot* is appropriate and that site does not have to be protected in a subsequently filed rulemaking petition).

Adoption of this proposal will be in the public interest. Approval of this proposal will allow Sutton to provide new first local aural service to Ty Ty. Sutton pledges to expeditiously apply for and to construct this proposed facility if it is awarded a permit for this facility.

Accordingly, Sutton Communications Company respectfully requests that this Petition be adopted and that the Commission issue a Notice of Proposed Rulemaking to amend the FM Table of Allotments as specified above, and accept comments thereon.

Respectfully submitted,

**SUTTON COMMUNICATIONS
COMPANY**

By: 

Dan J. Alpert

Its Attorney

The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201

703-243-8690

November 12, 2004

Attachment 1



DP-1. Profile of General Demographic Characteristics: 2000
Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data
Geographic Area: Ty Ty city, Georgia

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://factfinder.census.gov/home/en/datanotes/expsf1u.htm>.

Subject	Number	Percent
Total population	716	100.0
SEX AND AGE		
Male	339	47.3
Female	377	52.7
Under 5 years	61	8.5
5 to 9 years	67	9.4
10 to 14 years	43	6.0
15 to 19 years	51	7.1
20 to 24 years	52	7.3
25 to 34 years	108	15.1
35 to 44 years	113	15.8
45 to 54 years	78	10.9
55 to 59 years	26	3.6
60 to 64 years	28	3.9
65 to 74 years	56	7.8
75 to 84 years	19	2.7
85 years and over	14	2.0
Median age (years)	33.0	(X)
18 years and over	519	72.5
Male	235	32.8
Female	284	39.7
21 years and over	484	67.6
62 years and over	100	14.0
65 years and over	89	12.4
Male	29	4.1

Subject	Number	Percent
Female	60	8.4
RACE		
One race	711	99.3
White	454	63.4
Black or African American	235	32.8
American Indian and Alaska Native	0	0.0
Asian	1	0.1
Asian Indian	0	0.0
Chinese	1	0.1
Filipino	0	0.0
Japanese	0	0.0
Korean	0	0.0
Vietnamese	0	0.0
Other Asian ¹	0	0.0
Native Hawaiian and Other Pacific Islander	0	0.0
Native Hawaiian	0	0.0
Guamanian or Chamorro	0	0.0
Samoan	0	0.0
Other Pacific Islander ²	0	0.0
Some other race	21	2.9
Two or more races	5	0.7
Race alone or in combination with one or more other races ³		
White	459	64.1
Black or African American	235	32.8
American Indian and Alaska Native	0	0.0
Asian	1	0.1
Native Hawaiian and Other Pacific Islander	0	0.0
Some other race	26	3.6
HISPANIC OR LATINO AND RACE		
Total population	716	100.0
Hispanic or Latino (of any race)	26	3.6
Mexican	24	3.4
Puerto Rican	0	0.0
Cuban	0	0.0
Other Hispanic or Latino	2	0.3
Not Hispanic or Latino	690	96.4
White alone	454	63.4
RELATIONSHIP		

Subject	Number	Percent
Total population	716	100.0
In households	716	100.0
Householder	265	37.0
Spouse	133	18.6
Child	212	29.6
Own child under 18 years	159	22.2
Other relatives	64	8.9
Under 18 years	32	4.5
Nonrelatives	42	5.9
Unmarried partner	19	2.7
In group quarters	0	0.0
Institutionalized population	0	0.0
Noninstitutionalized population	0	0.0
HOUSEHOLDS BY TYPE		
Total households	265	100.0
Family households (families)	194	73.2
With own children under 18 years	98	37.0
Married-couple family	133	50.2
With own children under 18 years	68	25.7
Female householder, no husband present	47	17.7
With own children under 18 years	24	9.1
Nonfamily households	71	26.8
Householder living alone	56	21.1
Householder 65 years and over	27	10.2
Households with individuals under 18 years	112	42.3
Households with individuals 65 years and over	69	26.0
Average household size	2.70	(X)
Average family size	3.11	(X)
HOUSING OCCUPANCY		
Total housing units	289	100.0
Occupied housing units	265	91.7
Vacant housing units	24	8.3
For seasonal, recreational, or occasional use	3	1.0
Homeowner vacancy rate (percent)	3.6	(X)
Rental vacancy rate (percent)	10.5	(X)
HOUSING TENURE		

Subject	Number	Percent
Occupied housing units	265	100.0
Owner-occupied housing units	214	80.8
Renter-occupied housing units	51	19.2
Average household size of owner-occupied unit	2.74	(X)
Average household size of renter-occupied unit	2.53	(X)

(X) Not applicable

¹ Other Asian alone, or two or more Asian categories.

² Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

³ In combination with one or more other races listed. The six numbers may add to more than the total population and the six percentages may add to more than 100 percent because individuals may report more than one race.

Source: U.S. Census Bureau, Census 2000 Summary File 1, Matrices P1, P3, P4, P8, P9, P12, P13, P17, P18, P19, P20, P23, P27, P28, P33, PCT5, PCT8, PCT11, PCT15, H1, H3, H4, H5, H11, and H12.

Attachment 2

Petition for Rule Making

Channel 249A – 97.7 MHz

Ty Ty, Georgia

October 2004

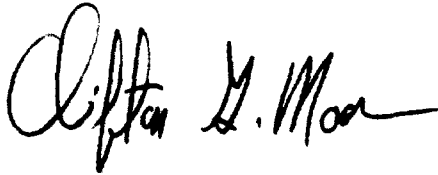
TECHNICAL COMMENTS

These comments are filed on behalf of Sutton Communications Company, proponent to allot Channel 249A to Ty Ty, Georgia. Exhibit #1 is an allocation study indicating that at the reference coordinates of North Latitude 31° 34 01 and West Longitude 83° 40 07 , the spacing requirements of §73.207 are met or exceeded. However, there is an apparent spacing shortage to WDMG-FM, Ocilla, GA. Through MB Doc 03-246, WDMG-FM was ordered to relocate to Ambrose, GA. WDMG-FM holds Construction Permit BPH-20040521AGT to build the new Ambrose facility. Given the fact that WDMG-FM is in the process of relocating from Ocilla, GA to Ambrose, GA and changing channels from 249A to 250A, this Rule Making Request only considers WDMG-FM at Ambrose, GA and ignores the facility at Ocilla, GA. From the proposed allocation site, Ty Ty, the community of license is served by the 70 dBu contour as seen in Exhibit #2.

Ty Ty is located in Tift County, Georgia. There are no other AM, FM or TV services allocated to Ty Ty. Ty Ty has a population of 745 persons according to the 2000 U.S. Census. From the reference coordinates, assuming a class maximum station not allowing for terrain variation, 2,516 square kilometers would be served and 63,545 persons reside within the 60 dBu contour. Ty Ty is not in an urbanized area.

When Channel 249A is allotted to Ty Ty, Sutton Broadcasting Company will file timely any paperwork necessary to apply for the new station.

All statements made herein are thought to be true and correct to the knowledge
of the undersigned.

A handwritten signature in black ink, appearing to read "Clifton G. Moor". The signature is fluid and cursive, with the first name "Clifton" being more prominent and the last name "Moor" following in a similar style.

Clifton G. Moor
Bromo Communications, Inc.

October 11, 2004

EXHIBIT #1
Petition for Rule Making
Channel 249A – 97.7 MHz
Ty Ty, Georgia
October 2004

Allocation Study

Searching from Allocation Reference
Ty Ty, Georgia

REFERENCE
31 34 01 N
83 40 07 W

CLASS = A
Current Spacings

DISPLAY DATES
DATA 09-25-04
SEARCH 10-06-04

----- Channel 249 - 97.7 MHz -----									
Call	Channel		Location		Dist	Azi	FCC	Margin	
WDMGFM	LIC-N	249A	Ocilla	GA	32.10	97.7	115.0	-82.90	
AL250	RSV	250A	Ambrose	GA	72.00	94.9	72.0	0.00	
WRAKFM	LIC	247C	Bainbridge	GA	95.07	241.3	95.0	0.07	
WRAKFM	CP	247C	Bainbridge	GA	95.09	241.3	95.0	0.09	
WDMGFM	CP -N	250A	Ambrose	GA	72.19	93.0	72.0	0.19	
WYYX.A	APP	249C1	Bonifay	FL	209.42	236.4	200.0	9.42	
WYYX	LIC	249C1	Bonifay	FL	209.59	236.4	200.0	9.59	
RDEL	DEL	252A	Cordele	GA	41.34	346.4	31.0	10.34	
WQXZ	LIC-N	252A	Cordele	GA	41.34	346.4	31.0	10.34	
WUFFFM	APP	248A	Eastman	GA	84.19	30.2	72.0	12.19	
WUFFFM	LIC	248A	Eastman	GA	84.56	29.9	72.0	12.56	
RADD	ADD	251C3	Dawson	GA	63.11	275.9	42.0	21.11	
WTCQ	LIC	249A	Vidalia	GA	137.32	57.7	115.0	22.32	
WIBBFM	LIC	250C3	Fort Valley	GA	111.53	355.7	89.0	22.53	
WWUF	LIC	249A	Waycross	GA	140.84	107.2	115.0	25.84	
RDEL	DEL	251A	Dawson	GA	63.11	275.9	31.0	32.11	
RADD	ADD	252A	Coolidge	GA	64.28	187.2	31.0	33.28	
WHLJ.A	APP-D	248A	Statenville	GA	105.38	143.1	72.0	33.38	
WHLJ.A	APP-D	248A	Statenville	GA	105.38	143.1	72.0	33.38	
RDEL	DEL	249C2	Eatonton	GA	201.44	11.7	166.0	35.44	
RADD	ADD	252A	Pinehurst	GA	66.68	3.0	31.0	35.68	
WHLJ	LIC	248A	Statenville	GA	115.28	139.1	72.0	43.28	
WMRZ.C	CP	251A	Dawson	GA	78.50	281.4	31.0	47.50	
WMGZ	LIC	249C3	Eatonton	GA	201.44	11.7	142.0	59.44	
RDEL	DEL	249C3	Eatonton	GA	201.44	11.7	142.0	59.44	
RADD	ADD	246A	Homerville	GA	95.15	121.2	31.0	64.15	
WJZT	LIC	250A	Woodville	FL	139.04	197.3	72.0	67.04	
RADD	ADD	249C3	Cross City	FL	209.16	166.0	142.0	67.16	

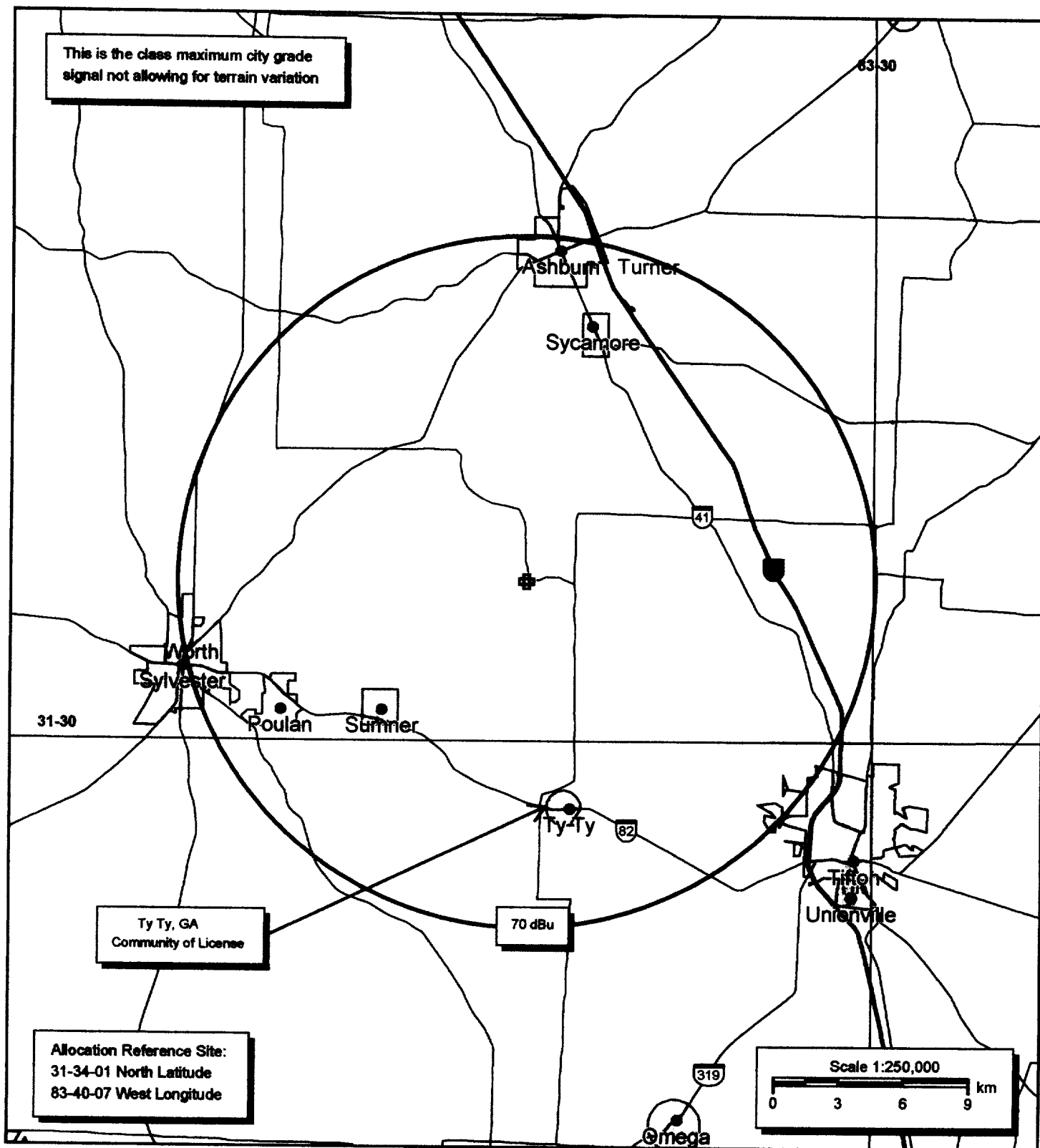


EXHIBIT #2
City Grade Contour
Petition for Rule Making
Channel 249A - 97.7 MHz
Ty Ty, Georgia

Bromo Communications, Inc.
 Atlanta, Georgia
 October 2004